



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

October 17, 1973

C. J. CARL
STAFF LEGISLATIVE ASSISTANT

Mr. Ricardo H. Garcia
County Attorney
Duval County
San Diego, Texas 78384

Open Records Decision No. 7

Dear Mr. Garcia:

Your letter of September 25 enclosed a request from Mr. Joe Coudert of the Corpus Christi Caller-Times to inspect and possibly copy the cancelled checks of Duval County. You refused to honor this request, claiming that the information requested was excepted from disclosure by Section 3(a)(3) of House Bill 6.

Because you have received a written request for information which you consider within one of the exceptions stated in Section 3 of House Bill 6, and because there has been no previous determination that the requested information falls within one of the exceptions, Section 7(a) requires that you request a decision from our office to determine whether the information is within the exception claimed. You have complied with this requirement. Pursuant to Section 7(b), we herewith render our decision.

We feel that the requested information should be disclosed.

Included in the listing of "Specific Information Which is Public" is the following information from Section 6(a)(3) of House Bill 6:

"Information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by governmental bodies, not otherwise made confidential by law."

Operation and administration of your county is inextricably tied to the income and outgo of county funds. This activity is reflected in the bank accounts maintained by the county, which would appear to place this checking account directly within the meaning of the word "account" as that word is used in Section 6(a)(3) of House Bill 6. Further, the county clearly utilizes current and past administrative records, such as cancelled checks, to estimate future expenditures of public funds. Such use makes the requested cancelled checks public information under Section 6(a)(5).

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You contend, however, that the cancelled checks in this instance should qualify as excepted under Section 3(a)(3) of House Bill 6 because the Internal Revenue Service is apparently investigating these records for the purpose of developing indictments and possible criminal prosecutions.

Section 3(a)(3) excepts from disclosure (in part):

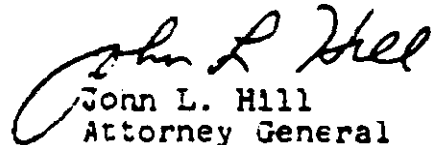
"Information relating to litigation of a criminal or civil nature and settlement negotiations... to which an employee or officer of the State or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection." (Emphasis added).

Provision for this exception contemplates litigation in which the state or a political subdivision is or may be a party, or in which a state or local officer or employee is or may be a party as a consequence of his office or employment. Further, as indicated by the last clause of Section 3(a)(3), the attorney general or the attorney of the political subdivision involved must have made a determination that the information should be withheld.

By the information we have, the tax investigation currently being conducted relates only to returns of private persons or corporations and not to county expenditure of funds. The county is not, nor are we advised that it expects to be, a party to any litigation. As we understand the situation, investigation of any county officer or employee which might be occurring relates only to that person's private tax affairs, and not to information generated by him "as a consequence of his office or employment".

For these reasons, we feel the information requested should be disclosed. Not only does the Act make this information public, but Section 3(a)(3) does not exempt it from disclosure because of the Internal Revenue Service investigations to which you refer.

Very truly yours,


John L. Hill
Attorney General

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